ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 638

207271

PROCEDURES TO EXPEDITE RESOLUTION OF RAIL RATE CHALLENGES TO BE CONSIDERED UNDER THE STAND-ALONE COST METHODOLOGY

WRITTEN TESTIMONY OF NORFOLK SOUTHERN CORPORATION

Summary of Testimony of James A. Squires for Norfolk Southern Railway Company

I. Introduction – I am James A. Squires, Senior General Counsel for Norfolk Southern, with responsibility for overseeing regulatory litigation before the Board. NS supports the AAR comments and testimony, particularly as they relate to non-binding mediation, but appreciates the opportunity to make a few points about the procedures governing stand-alone rate cases garnered from our participation in two recent such cases.

II. NS firmly believes that commercial disagreements between it and its customers should be resolved privately and not through regulatory intervention. We therefore applaud the Board's initiative to institute non-binding mediation before a formal SAC case can begin. We also believe that in order to enhance the prospects for success in such mediations that the mediators should have experience with significant commercial contracts and some familiarity with the Board's rate procedures, although we do not believe it necessary for them to have any extensive grounding in stand-alone cost theory. And we concur with the AAR that they should not be members of the Board's staff, especially staff which might have official responsibilities in connection with any case that may ensue if mediation fails.

III. We have serious concerns about the disproportionate burden and costs borne by railroads in the discovery process, and urge the Board to require the parties to limit the scope of discovery in stand-alone cases. Some specific concerns include the fact that Complainants have little incentive to moderate the scope of their requests of railroads which of course are in possession of most data relevant to the SAC analysis. However, demanding production of data for multiple years when only one year will ultimately be used in the case, and forcing railroads to canvas vast databases and voluminous files for records in formats favored by Complainants, wreaks havoc on our ability to conduct our business. And the enormous costs, particularly IT costs for searching and compiling the millions of pieces of traffic data demanded, should be shared by Complainants, not levied on the railroads.

IV. We believe that the use of the designation "Highly Confidential", which precludes railroad or utility personnel, including in-house counsel, from reviewing evidence or argument based upon material so denominated, has been overused and constitutes a significant impediment to meaningful participation by parties (as opposed to their outside counsel and consultants) in the assessment of opponent's filings and the generation of responsive evidence and argument. We ask the Board to remove the bar against in-house counsel viewing "Highly Confidential" materials in future cases.

Respectfully submitted,

James A. Squires

James A. Squires
Norfolk Southern Railway Company

Dated: February 21, 2003